IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1774 OF 2006

SHRI AJAY SINGH .. PETITIONER

Versus

M/s. AVISKHAR ENGINEERS PVT. LTD. RESPONDENTS

Mr. Surel Shah for petitioner

Mr. D. A. Nalawade, for R-1

Mrs. M.H. Mhatre, APP

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 15/11/2006

P.C.

. On 13//11/06 in my order of the same day, I have expressed an opinion that the impugned order does not merit any interference. I had adjourned the matter to 15/11/06 i.e. today, to explore the possibility of settlement.

2. Today the learned counsel for the parties state that the settlement is not possible and hence I proceed to give reasons why I have stated that the impugned order does not merit any interference.

3. The petitioner is an accused in criminal case

No. 1248 of 2002, pending in the court of Judicial Magistrate First Class, Pune, under Section 138 of the Negotiable Instruments Act. In this petition, the petitioner has prayed that order passed by the trial court disallowing cross-examination be set aside. Ordinarily in such matters the courts do take sympathetic view but it is apparent in this case that the petitioner wants to delay the proceedings.

4. It appears that on 14/2/06 the advocate of the petitioner sought exemption on the ground of illness of his son. That application was granted but adjournment was rejected. The learned Magistrate has observed that the advocate of the petitioner is not ready to conduct cross-examination. He has observed that the record shows that previously also no cross order had been passed which was set aside subject to cost of Rs.1000/-. He has further observed that thereafter also the petitioner failed to cross-examine the complainant. The learned Magistrate has further stated that the petitioner neither appears in the court nor allows his advocate to cross-examaine and this is nothing but delaying tactics. In the circumstances no cross order was passed by the

learned Magistrate.

5. The petitioner preferred an application for setting aside the no cross order on 6/7/06. The learned Magistrate observed that the petitioner has appeared after publication of proclamation. The petitioner has received copy of evidence long back. He has further observed that while seeking setting aside of 'no cross' order, the petitioner has sought adjournment and, therefore, he wants to prolong the matter. The learned Magistrate has further observed that to give opportunity to put his defence, 'no cross' order is set aside subject to the condition that the petitioner would conduct cross forthwith otherwise it may be deemed that the application is rejected.

6. The learned Magistrate has passed another order of the same date noting that the petitioner's advocate is not ready to conduct cross-examination. Since on that day the complainant was absent, he kept the matter for order on 'no cross' on 11/7/06. On 11/7/06 the learned Magistrate observed that in spite of giving opportunity, the petitioner's advocate has not proceeded with the cross-examination. He has stated that the

petitioner is also not bothered about the direction given by the court. He has further noted that the petitioner's intention is to delay the proceeding. He, therefore, rejected the application filed by the petitioner.

7. Mr. Shah, learned counsel for the petitioner submitted that on 11/7/06 the learned Magistrate should have allowed the petitioner to conduct cross-examination. He submitted that in the interest of justice the impugned order may be set aside.

8. I am not impressed by this submission. All the orders to which I have made reference hereinabove indicate that the petitioner wants to procrastinate the litigation. The learned Magistrate is right when he observes that the petitioner's intention is to delay the proceedings. Though sufficient opportunity was given to the petitioner, he has not chosen to conduct cross-examination. No indulgence can be granted to such a person.

9. Petition is, therefore, dismissed.

JUDGE